G.F.72

1924.

Department of Rev

OFFICE Board of Rev 2R & S

STATION Madras

Hem Urgent
Please issue
today 10/7.

Mis No. 63

12.0
10/7
10/1.

Dated 10 7. 24

To whom sent		Date	Initials
	Given for copying		
	Copied		
	Examined		
	Signed		
	Given for despatch		
	Despatched		
	Indexed		
	To be destroyed on		

(SUBJECT.)

Suits (South Kanara) - Unter D.M
O.S. 564 of 23 - Upp. angad.
- Kattrupadu village - 5 nos 131/2
and 133/4 - Encroachment -
Defence sanctioned

* Not to be filled in the case of permanent record

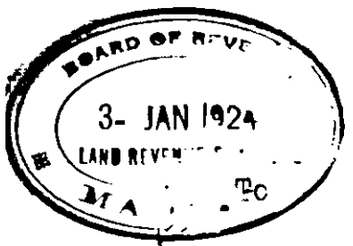
H9 · 16.1.24

Ref. on V.3-6692-23. South Kanara Collector's Office,
Mangalore, 28th December 1923.

A56

From

G.W. Wells, Esquire, M.A., I.C.S.,
Collector of South Kanara.



To

The Secretary to the Board,
Land Revenue, Madras.

Sir,

Suit - Puttur - District Munsif's Court - O.S. 1923-564.

***

I request the sanction of the Board for the ------ defence of the above suit. It has been filed by one --- Manjunatha Prabhu against Government for a declaration -- that he is entitled to retain possession of S.Nos.133/4 & and 131/2 of Kutrupady free from disturbance by the Defendant (Government)

2. As these plots contained improvements, darkhast proceedings were instituted in respect of them in 1920, - but their assignment was refused by the Tahsildar of ---- Uppinangady, as the District Forest Officer objected on the ground of their proximity to the Reserved Forest. This order was upheld by the Divisional Officer in appeal. Till the disposal of the appeal the plots had been claimed as only kumaki, but in the revision petition filed against - the Divisional Officer's order it was alleged that they - were his mulgeni lands left out of patta at Settlement. During the enquiry held in connection with the revision - petition the petitioner admitted on 21st November 1921 -- that 133/4 was only kumaki to his patta land. The other plot was claimed by him on warg right and was said to lie within an old enclosure. In support of this statement he

produced a copy of an azmaish list of 1873 prepared by a Civil Court Amin which describes certain plots as bounded by a wall on the west. The plots were inspected by the Revenue Inspector who reported on 19th January 1922 that this boundary as well as that on the north and south was ----- easily identifiable. He was of opinion that 131/2 was part of warg and that it would be hard to deprive the --- petitioner of it as it contained 17 areca trees aged 40 to 50 years. The Tahsildar also inspected the plots on 12th April 1922 and came to very much the same conclusion as the Revenue Inspector, and held that it would be very - hard to deprive the petitioner of his legitimate kumaki - and of the fruits of his labours and improvements simply because the plots border on a reserve forest. The ----- Divisional Officer supported the recommendation of ------ assignment so far as 131/2 was concerned. As regards -- 133/4, which contained 2 pariah huts and some areca and -- plantain plants some 2 years old, he did not support it, as the improvements on it were of a trivial nature. ---- Mr. Nedungadi held that the District rule not to assign - land within 100 yards of a reserve forest was a wholesome one, and rejected the petition with the remark that the -- petitioner did not lose anything, as he can always enjoy his kumaki.

3. Encroachment proceedings were then instituted - in respect of both the plots by the issue of notices under sections 7 and 6 of the Land Encroachment Act. The ---- petitioner appealed once more to the Collector reiterating his warg claim and also alleging that the order to evict him was a direct violati the Collector's order to -- allow him to enjoy his kumaki privileges always. The -- warg claim was rejected by me as the document produced by him viz. the azmaish list of 1873, evidenced at most ----- enjoyment of 50 years and not for the full statutory period of 60 years, and as the claim was also barred under the --

X- The substance of the notice is given at b & (h)

Madras High Court ruling in S.A.No.2048/14, the --------- petitioner's mulgar not having claimed the plots in his - objection petition presented to the Settlement Officer on the service of the rough pattas on him. I further ----- ordered the removal of the pariah huts and areca and ---- plantain plants in both the plots and allowed the ------- enclosure wall to stand as an old kumaki enclosure and -- also the areca trees in 131/2, in respect of which I directed the Tahsildar to issue a tree patta. The removal of the huts and the areca and plantain plants was carried -- out by the Revenue Inspector on 25th June 1923 and the -- tree patta was issued on 30th June 1923. The Plaintiff then sent me a suit notice which was recorded. Hence -- the suit.

4. The Government Pleader, Mangalore is of opinion that the Plaintiff's enjoyment of the plots in question - is only that of a kumakidar, which can confer no right on him or enable him to set up any adverse possession ------ against Government and that the suit is clearly barred -- under section 120 of the Limitation Act.

5. I propose to file the following in Court:-

(i) The Plaintiff's statements dated 11th December 1920, 21st November 1921 and 18th October 1921 and appeal petition dated 28th June 1921 to the Divisional Officer - to show that he claimed them only as kumaki.

(ii) The Settlement objection petition presented by the Plaintiff's mulgar Krishna Hebbara to show that he -- did not claim these plots as warg at Settlement.

(iii) An extract from the Settlement Register ------ relating to S.Nos. 133 1 & 3 held on mulgeni by the Plaintiff under Krishna Hebbara.

6. The draft written statement prepared by the --- Vakil doing Government work at Puttur and slightly ------ corrected by the Government Pleader, Mangalore is ------- submitted herewith for the Board's approval.together with

the records noted in the margin.

7. The plaint dated 6th October 1923 was served on me on 22nd October --- 1923 and the suit is posted to 16th January 1924 for hearing.

1. Copy of plaint.
2. Copy of Government Pleader's letter dated 8.12.1923.
3. Dis. file 4509-23 R dated 10.9.1923 of this office.
4. Dis. file 7673-22 D dated 24.4.1923 of this office.
5. Dis. file 7036-21 D dated 30.6.1922 of this office.
6. Dis. file 28 R/Rev.23 dated 30.6.1923 of Uppinangady Taluk office.
7. Settlement objection petition diary of Kutrupady village.
8. Records of D.R.230/1330 on the file of the Tahsildar of Uppinangady.
9. Dis. file 721 D/Rev.21 of the Puttur Divisional office.

Your obedient servant,

Collector 30/12/23.

M.S.R./29.12.

29.12.23 29.12.23

In the Court of the District Munsiff of Puttur.

O.S.No.564/1923.

Manjunatha Prabhu, son of Rangaya Prabhu, residing in Kutrupady village, Uppinangadi Taluk.) Plaintiff.

The Secretary of State for India in Council.) Defendant.

Plaint under order 7 rule 1 of the C.P.C.

1. Plaintiff is a landholder, residing in Kutrupady village, Uppinangadi Taluk. The address for service of processes etc. on the Plaintiff is under the same as given above.

2. Plaintiff and his predecessors-in-title have been in continuous exclusive possession and enjoyment of ------- S.Nos.133/4 and 131/2 of Kutrupady village from time ------ immemorial. S.No.133/4 had originally been under the ------- exclusive possession and enjoyment of one Gumpakallu ------ Anantha Bhatta who on 6th March 1867 granted the same along with other lands on mulgeni by means of a registered ------ mulgeni chit and since that time plaintiff and his father - have been in exclusive enjoyment and undisturbed possession up to this time.

3. Survey number 131/2 of Kutrupady village has also been in exclusive possession and enjoyment of the plaintiff and his predecessors-in-title from immemorial times. Plaintiff derived his title from one Kalar Ganapathi Kalya by means of a registered mulgeni transfer dated 25th ------ January 1910.

4. S.No.133/4 contains Ramapatre, Kiralbogi and ---- other valuable trees and pepper vines planted by plaintiff's predecessors-in-title, and plaintiff lately began to effect some improvements upon the land by constructing 2 Pariah -- huts, planted 10 areca plants and 4 plantain plants on the land. S.No.131/2 is an old bagayat containing old areca

trees and pepper vines planted by plaintiff's predecessors-in-title.. Besides these, plaintiff has planted lately ---- 48 areca plants.

5. While plaintiff has been enjoying the said lands openly and without obstruction for a very long time, ------ plaintiff's enemy Subraya Hebbara, the Potail of Kutrupady village and instigated by him his Shanbhogue Krishna Prabhu instituted false land encroachment proceedings against the plaintiff and the Revenue authorities under the colour of the said Act forcibly removed and uprooted the hut, and --- areca plants on the said lands, causing great annoyance and loss to the extent of Rs.50/- to the plaintiff.

6. Thus the revenue authorities under the colour of the said land encroachment Act harassed the plaintiff in the above manner by wreeking their private vengeance; but they could not evict the plaintiff from land which plaintiff even now holds in his exclusive possession.

7. Plaintiff and his predecessors on account of their exclusive possession and enjoyment for over the statutory period of 60 years have got indefeasible title to the said 133/4 and 131/2 as warg of muli No.16 and muli No.8 and the Government has no manner of right to disturb the quiet and peaceful enjoyment and possession of the plaintiff. The proceedings under the Land Encroachment Act under which the revenue authorities seemed to act are not justifiable to the circumstances of this case and are illegal. Plaintiff being an illiterate, old and feeble man of very poor circumstances the local village officials took advantage of their power and influence to get some false records to the great detriment of the plaintiff. Such unauthenticated and partial records --- cannot affect the undisputed rights of the plaintiff which -- are borne out by old registered documents etc.

8. Plaintiff sent a suit notice to the Collector of -- South Kanara on 17th July 1923 and no redress has been given to the plaintiff up to this time.

9. The cause of action for this suit arose on or about

the 24th of June 1923 when the Revenue authorities interfered with plaintiff's possession and caused damage in ---- Kutrupady village within the jurisdiction of this court.

10. Plaintiff values the reliefs sought at Rs.56-0-0 for purposes of court fees and jurisdiction.

11. Therefore plaintiff prays for a decree and judgment.

(a) declaring that plaintiff is entitled to retain possession of ---- S.Nos.133/4 and 131/2 of Kutrupady -- village free from disturbance from -- the Defendant. For purpose of court fees this relief is valued at ~~Rs.~~ ——— Rs. 6--0--0

(b) directing the defendant to pay plaintiff damage for the forcible removal of the improvements effected by the plaintiff in the said plots Rs. 50--0--0

(c) directing the defendant to pay the costs of this suit with future ---- interest at 12½%.

(d) directing such other reliefs as the court deems fit under the ------ circumstances of this case.

Description of property.

All the lands comprised in S.Nos.133/4 1 acre 86 cents Punja 0-11-0 assessment, and 131/2 acre 1 cent 40 Punja 0-8-0 assessment.of Kutrupady village, Uppinangadi Taluk.

Sd/ B.Shivarama Hol

Vakil.

Letter-from A.J.Lobo, Esquire, B.A., B.L., Government Pleader.
To-the Collector of South Kanara.
Dated-Mangalore, 8th December 1923.
No.-305/1923.

.....

Subject:- Suit - O.S.No.564 of 1923 - Manjunatha Prabhu - Plaintiff

Versus

The Secretary of State for India in Council - Defendant

.....

vakil appearing for Government at Puttur with the slight additions made by me in para 2 may be accepted and filed in Court. On the merits, Plaintiff does not appear to have any sort of title or claim to the plaint plots. His enjoyment of them appears to have been only as a kumkidar which can confer no right on him nor enable him to set up any adverse possession against Government. Further the - plots stood registered at the Settlement as Government -- land and his predecessors-in-title not having objected to the Settlement classification of the same, his present -- suit for a declaration of his title if any to the plaint plots is clearly barred under section 120 of the -------- Limitation Act. The papers sent to me are returned ---- herewith.

/True Copy/

30/12/25

~~Ass~~ Collector.

Compd
30.12.25

M.D'S.29/12.

9

In the District Munsif's Court of Puttur.

O.S.No.564 of 1923.

Between

Manjunatha Prabhu. Plaintiff.

and

The Secretary of State for India) in Council.) Defendant.

The written statement of the Defendant, the ------ Secretary of State for India in Council, under Rule 1 of order viii of the Civil Procedure Code.

The abovenamed Defendant states as follows:-

1. The Plaintiff's suit is not a just one and is - not sustainable at law.

2 The Defendant denies that the Plaintiff and his predecessors-in-title have any sort of right or title to the plaint plots or that they have been in exclusive ---- possession and enjoyment of the same or that they have -- acquired any title to them by reason of their alleged --- adverse or exclusive possession for more than the statutory period or otherwise.

3. The Defendant also denies that the Rampatri, -- Kiralbogi and other timber trees or pepper vines standing on the plaint plots were planted by Plaintiff's predecessors-in-title or Plaintiff, and that S.No.131/2 or any portion thereof is an old bagayat land as alleged in the plaint.

4. The Plaintiff having occupied, without permission, the plaint plots, which are waste lands belonging to Government and lying in close proxirity to the Reserved Forest, proceedings were properly taker against him under the --- Land Encroachment Act, 1905 and he was duly evicted ----- therefrom. The Defendant denies that the Revenue Department of Government had no right to evict the Plaintiff -- and that there was any illegality or irregularity in the proceedings instituted against him, or that Plaintiff had suffered any real loss in consequence thereof.

10

5. Plaintiff's suit is barred by the law of limitation.

6. Plaintiff's claim is also opposed to Section 42 of the Specific Relief Act 1877. -

7. The Defendant denies all the other allegations in the plaint which are not expressly admitted herein and puts him to strict proof of all of them.

8. Plaintiff is, therefore, not entitled to any --- relief in this suit.

Prays accordingly that the Plaintiff's suit may be dismissed with costs.

~~For~~ Collector. 30/12/53

M.S.R./29.12. Cmfo 30.12.53

DRAFT FOR APPROVAL

Enclosures.

Despatch No.

When given to fair-copying

Fair-copied by

Fair-copy compared by

When despatched

Heard on 16

JM-1
S
A

Office.

Register No. A56 - 24, dated

From

Subject
Suit (South Kanara)
D M's Court Puttur
O.S No 564 of 23.
- Uppinangadi Tk -
Kutrupadu village
S nos 131/2 and 133/4
- Encroachment - Defence
sanction -

To

THE.

Res (rms) 10.1.24

The Board sanctions the defence of the suit and approves of the draft written statement subject to the following additions:-

~~Add~~ insert the following as para 6 of the W.S. and renumber the succeeding paragraphs

"6. The plaintiff having admitted that he ~~claimed~~ claimed the ~~lands~~ only as Kumki is estopped from

pp 9 to 10 cf.

Done today.
10/1/24

securing up any private right or title to the lands.

for Ves 5/1/24. 5/2/24.

To the Collr of South Kanara with reference to reg[d] post